which they were not. In the circumstances I find as a fact that there were no such oral agreements as alleged by the defendant in regard to and before the execution of the second, third and fourth guarantees.

Issue 5

In view of cl 10 and ss 93-94 of the Evidence Act, it seems to me that such oral agreements, even if in fact they had taken place, cannot be admitted to vary or limit the operation of the so-called superseded three guarantees.

For these reasons there will be judgment for the plaintiffs in the sum of $938,819.58 and costs and interest at 8% pa from date of writ to date of judgment.

Application allowed.

Solicitors: *Donaldson & Burkinshaw*; *Chung & Co.*

Reported by *Wong Kim Fatt*

Re Ram Goswami

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 917 OF 1987
WEE CHONG JIN CJ, LAI KEW CHAI AND THEAN JJ
13 SEPTEMBER 1988

Legal Profession – Disciplinary proceedings against advocate and solicitor – Forfeiture of bail – Advocate and solicitor mitigating in terms which were untrue – Deception of court – Whether professional misconduct – Legal Profession Act (Cap 161, 1985 Ed), s 80(2)(b) & (h)

Evidence – Hearsay evidence – Whether prejudicial – Evidence of accomplice – Whether corroboration required – Evidence Act (Cap 97, 1985 Ed), ss 135 & 169

The respondent, an advocate and solicitor, appeared before a disciplinary committee appointed to hear and investigate a complaint against him. The substance of the complaint was that the respondent, while acting for one Abdul Hamid who was ordered in two criminal cases in the District Court to show cause why his bail money of $50,000 should not be forfeited, did mitigate to the court in terms which he knew were untrue as the bail money, contrary to the mitigation made, was not the 15 years' savings of the bailor nor did it belong to or was provided by the bailor. The respondent said that, at the time of making the mitigation, he did not know that the bail money was Hamid's.

The committee found that the respondent knew all along that the money never belonged to Hamid and was satisfied beyond reasonable doubt that the respondent had mitigated to the court in terms which he knew or ought to have known were untrue, and had thereby wilfully and falsely misrepresented to the court the true state of affairs. Accordingly, the committee determined that the respondent was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 80(2)(b) of the Legal Profession Act (Cap 161, 1985 Ed) ('the Act'). The respondent was also found guilty of such conduct as would render him liable to be disbarred or struck off the roll of the court or suspended from practice or censured if a barrister or solicitor in England, due regard being had to the fact that the two professions are fused in Singapore, within the meaning of s 80(2)(h) of the Act.

In proceedings before the High Court following the findings and determination of the committee, the respondent challenged the findings of the committee. He contended that there were contradictions in the evidence of Hamid given before the committee. He also contended that hearsay evidence had been admitted which had gravely prejudiced him. It was also argued for the respondent that the committee had erred in drawing wrong inferences and in failing to draw an adverse inference regarding the Law Society's failure to call as witnesses the alleged owners of the bail money. He also contended that, although the conclusion of the committee made Hamid an accomplice, the committee failed to touch on this aspect. Another point taken was that Hamid was hostile to the respondent and had concocted evidence against the respondent.

Held, ordering that the respondent be suspended from practice for a period of six months and that he pay the costs of the proceedings before the court and the committee:

(1) The committee had found correctly in being satisfied beyond reasonable doubt that the respondent did mitigate to the court in terms which he knew were untrue as the bail money was not the 15 years' savings of Hamid nor did it belong to or was provided by Hamid.

(2) There was no merit in the submission that prejudicial hearsay evidence had been admitted. The committee's findings did not rely on the alleged prejudicial hearsay evidence. In any event, even if the committee ought not to have admitted the evidence, this was a case where s 169 of the Evidence Act should be invoked.

(3) Section 135 of the Evidence Act as amended by Act No 11 of 1976 since 1 January 1977 provides that an accomplice shall be a competent witness against an accused person and that any rule of law or practice whereby at a trial it is obligatory for the court to warn itself about convicting the accused on the uncorroborated testimony of an accomplice is thereby abrogated.

(4) It is imperative that advocates and solicitors of the Supreme Court maintain at all times the highest standard of integrity in court. It is clearly professional misconduct for an advocate and solicitor to engage in any sort of deception of the court. The committee was correct in determining that the respondent was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 80(2)(b) of the Legal Profession Act. There was also no doubt that the respondent's conduct came within the scope of s 80(2)(h) of the same Act.

Legislation referred to

Advocates and Solicitors (Disciplinary Proceedings) Rules 1963
Evidence Act (Cap 97, 1985 Ed) ss 135, 169
Legal Profession Act (Cap 217, 1970 Ed) s 84
Legal Profession Act (Cap 161, 1985 Ed) s 80

Spencer Gwee for the Law Society.
Leo Fernando for the respondent.

Cur Adv Vult

Wee Chong Jin CJ (delivering the judgment of the court): The respondent, an advocate and solicitor, appeared before a Disciplinary Committee appointed to hear and investigate a complaint against him. The complaint, or as is normally called the 'charge', against the respondent was:

> That he on 26 May 1984 whilst acting for one Abdul Hamid who was ordered to show cause in DAC No 3834 of 1983 and DAC No 3901 of 1983 why his bail money of $50,000 should not be forfeited, did mitigate to the court in terms which he knew or ought to have known were untrue as the bail money, contrary to the mitigation made, was not the 15 years' savings of the bailor nor did it belong to or was provided by the bailor.

The Law Society's statement of the case, as required by the Advocates and Solicitors (Disciplinary Proceedings) Rules 1963, was as follows:

(1) Ram Goswami (hereinafter referred to as the respondent) an advocate and solicitor of the Supreme Court of Singapore is the sole proprietor of the firm of Ram Goswami of 101, Upper Cross Street, #05-57, People's Park Centre, Singapore 0105, and is of 12 years' standing.

(2) On 26 May 1984 the respondent appeared before District Judge FG Remedios in the subordinate courts as counsel for an Indonesian, one Paul Basoeke Soebroto (hereinafter referred to as 'Soebroto') who had been charged with offences of attempted cheating in DAC Nos 3834 of 1983 and 3901 of 1983.

(3) Soebroto was not present in court and the district judge thereupon called on the bailor, one Abdul Hamid bin Abdul Salam (hereinafter referred to as 'Hamid'), who was the respondent's clerk to show cause why the bail furnished of $50,000 ('the bail') should not be forfeited.

(4) The respondent informed the court that Hamid did not wish to show cause against forfeiture but only wished to mitigate and accordingly he proceeded to inform the court, inter alia, that Hamid earned a monthly salary of $770 and that the bail money was Hamid's 15 years' savings. In so doing the respondent, with intent to deceive and mislead the court, wilfully and falsely misrepresented the true state of affairs which was as follows:
   (a) that the bail was not Hamid's moneys;
   (b) that the bail had been furnished by the family of Soebroto in the form of cash $25,000 and by way of a fixed deposit of $25,000 with Malayan Banking Bhd;
   (c) that as a favour to and at the request of the family of Soebroto, in particular Soebroto's wife, Hamid agreed to stand surety for Soebroto since Soebroto's wife and other members of his family could not do so, being foreigners.

   With full knowledge of the facts as itemized in paras (a)-(c) above the respondent nevertheless informed the court without prior consultation of and without Hamid's consent that the bail belonged to Hamid.

(5) Subsequent thereto the respondent filed a notice of appeal against the District Court's forfeiture of the bail on Hamid's behalf, knowing full well that the application was based on a false premise, namely, that Hamid was the person who furnished the bail.

(6) Sometime in August 1984 the respondent was notified that Soebroto had passed away. The appeal filed by the respondent on Hamid's behalf was, after several adjournments, fixed to be heard on 20 March 1985, by which time the respondent had received a certified copy of Soebroto's death certificate.

(7) On 20 March 1985 when Hamid's appeal came up for hearing, the deputy public prosecutor inquired of the respondent as to whether there was documentation to substantiate Hamid's ownership of the bail. The respondent directed the question to Hamid who responded to say that the respondent well knew the bail did not belong to him and further that the appeal should be withdrawn if there were difficulties attendant thereon. The respondent thereupon applied to court for and obtained his discharge from further acting for Hamid alleging that Hamid had given him conflicting instructions.

(8) By reason of the matters referred to in paras 4-7 above, the respondent was guilty of fraudulent or grossly improper conduct in the discharge of his professional duty within the meaning of s 84(2)(b) of the Legal Profession Act; further and in the alternative, the respondent was guilty of such conduct as would render him liable to be disbarred/struck off the roll of the court, suspended from practice or censured if a barrister or solicitor in England, due regard being had to the fact that the two professions are fused in Singapore.

(9) Accordingly the respondent ought to be dealt with under s 84(2)(b) and 84(2)(h) of the Legal Profession Act (Cap 217, 1970 Ed).

Section 84 of the Legal Profession Act (Cap 217, 1970 Ed) is now s 80 in the 1985 Edition of the statutes. We will refer to the sections in the manner that they appear in the 1985 Edition.

The evidence before the Disciplinary Committee

The Law Society called two witnesses: (1) Mr Abdul Hamid bin Abdul Salam (also known as Joe Hamid) who was employed by the respondent as his chief clerk from April 1981 to 31 March 1985; and (2) Mr Bambang Budiprawiro, an Indonesian businessman residing in Singapore. We will refer to them as Hamid and Bambang respectively.

In July 1983, one Paul Soebroto was arrested and subsequently charged in the subordinate courts with offences of attempted cheating. A few days later, Mantiri (Soebroto's wife) and Nelo (Mantiri's friend) went to the respondent's office. The respondent was engaged to act for Soebroto. On the same day, the respondent and Hamid went to the Commercial Crime Division to see Soebroto, who instructed the respondent to apply for bail.

When the case was next mentioned in the subordinate courts, the court offered bail of $50,000 in one surety or $25,000 in two sureties. Soebroto was unable to furnish bail that day and was accordingly remanded at Queenstown Remand Prison.

Later that day, the respondent, Hamid and Nelo went to visit Soebroto at the remand prison. Soebroto instructed the respondent to contact two of his friends who were not in Singapore and who would be able to raise bail for him. The respondent then returned to his office and sent a telegram to each of the two friends mentioned. One of them was Mukti. The other friend did not feature at all in any of the events following this.

On 9 September 1983, Mantiri, Mukti and Bambang went to the respondent's office. There they discussed with the respondent and Hamid the question of bail for Soebroto. There are two conflicting accounts of what took place at this meeting and at another meeting later that day.

Hamid's testimony on this meeting was that the respondent was told that Mukti had an amount of cash in United States dollars equivalent to S$25,000. It was suggested that Hamid should be one of the bailors using Mukti's cash as bail money. Bambang was prepared to stand bail for the other $25,000 by offering the stock-in-trade and other assets of his company as security. Hamid's evidence was corroborated by Bambang who said he wanted to stand as surety for $25,000 only. However, according to the respondent, as far as he could recall, he was told that Bambang wanted to offer bail for the full sum of $50,000, with his company's assets as security. The respondent said he was not told that Mukti had the equivalent of S$25,000 or that Hamid was to be one of the bailors.

After that meeting in the respondent's office, Hamid accompanied Mukti and Bambang to the Criminal Investigation Department to ascertain whether Bambang's company's stock-in-trade was acceptable for the purpose of bail. They saw the sergeant in charge of the case who informed them that that question was for the court to decide.

The three of them then proceeded to a money-changer to convert the US dollars that Mukti was carrying in his brief case to Singapore dollars. The money was thereafter placed in a fixed deposit account with Malayan Banking Bhd. The fixed deposit receipt issued by the bank stated that the amount of S$25,000 was received from 'Mr Joe Hamid'. The date of issue was 9 September 1983.

Hamid then returned to the office and informed the respondent that Mukti's money had been placed in a fixed deposit account. The respondent denied having been told this.

Later that day, the respondent, Hamid, Mukti and Bambang proceeded to the subordinate courts to bail out Soebroto. According to Hamid, bail was tendered in two sureties, Bambang for $25,000 on the security of his company's stock-in-trade and assets, and Hamid for $25,000 with the fixed deposit as security. The respondent did not deny this but testified that, as far as he could remember, the only surety was Bambang standing bail for $50,000 on the strength of his company's assets. They failed to bail out Soebroto that day because the deputy registrar did not accept Bambang's company's assets as security.

According to Hamid, he explained the reason for the rejection by the deputy registrar to Mukti and Bambang in the presence of the respondent. Hamid also suggested that they raise the remaining $25,000 in cash. The respondent's account was that he advised Mukti and Bambang to find somebody with a security acceptable to the court.

The next day (10 September 1983), Mantiri called Hamid to inform him that the remaining $25,000 in cash had been raised. Hamid told this to the respondent. Later, the respondent, Hamid, Mukti and Bambang proceeded to the subordinate courts. In the bail room at court 26 and in the respondent's presence, it was decided that Hamid was to be the bailor. Hamid went to the cashier and deposited the $25,000 in his name. He then returned to the bail room and signed the bail bond. He declared that he had a fixed deposit of $25,000 with Malayan Banking Bhd and $25,000 cash was deposited in court. After that, the respondent and Hamid proceeded to the deputy registrar's chambers. Soebroto was also brought there. The bail was accepted and Soebroto was thereupon released from custody.

The respondent's version was that he did not know the $50,000 bail moneys were not Hamid's. He testified that on that day, Hamid went to his office to inform him about being ready to bail out Soebroto. He was busy and told Hamid to proceed to the court first. Later he went to the bail room of court 26 where he saw Soebroto, Hamid, Mukti and Bambang. The bail room was crowded. He therefore left again for his office after telling Hamid to call him when everything was ready. About 30 minutes later, Hamid informed him over the telephone that all papers were ready. He then returned to the subordinate courts. Before they went into the deputy registrar's chambers, Hamid told him that he (Hamid) was going to be the bailor. Inside the chambers, the respondent introduced himself as the lawyer for Soebroto and Hamid as the bailor. The deputy registrar explained to Hamid the consequences of standing bail. Soebroto was then released. The respondent maintained that he did not see the bail bond or the declaration of assets by Hamid. The respondent's version was rejected by the Disciplinary Committee.

On 19 September 1983, the respondent made an application in the subordinate courts that Soebroto be allowed to leave Singapore pending his trial. The court allowed Soebroto to leave and remain out of Singapore

until 19 December 1983, but on that day Soebroto failed to turn up for the trial which was adjourned. There were several other adjournments but Soebroto did not turn up in court each time. On 26 May 1984, Soebroto still did not attend court and a warrant of arrest was thereupon issued. The court then called upon the bailor to show cause why the bail money of $50,000 should not be forfeited. Hamid did not show cause. The respondent mitigated on his behalf. The mitigation plea, which formed the substance of this complaint against the respondent, was:

Goswami for bailor

Bailor is 33 years old. Married with three children. Law clerk for about 15 years. Currently employed in my (Goswami's) firm, $770 per month. Bail money is his 15 years' savings. A Muslim who attends mosque everyday. Takes religious instructions.

When I (Goswami) was instructed in this case accused had no one to bail him out. He is an Indonesian. Accused pleaded with the bailor to help him out. Told the bailor that he was a wealthy man in Indonesia and that upon being released on bail he would remit money to the bailor. Accused complained to the bailor that he was having heart trouble and while remanded in Queenstown was undergoing severe pain and hardship. Accused even cried before the bailor. Held his feet, kissed his hands and said, 'Do me this favour. You are a good Muslim and as a Muslim brother, help me out.'

Charge against accused for attempted cheating and a charge for cheating where sum involved was $9,125. Small amount compared to the amount of bail. That was the actual loss. True that was not the only consideration when bail was fixed. Accused a foreigner.

Bailor pleads that the entire sum be not forfeited. Great hardship. Has done all he could reasonably do in the circumstances. No money to spend on trip to Indonesia and not even sure if he can locate the accused. This is the last time that he will stand bail for anyone.

The court, however, ordered that the full amount be forfeited.

The respondent maintained that Hamid gave him oral instructions in court while the district judge was on the bench. That took two or three minutes. Immediately thereafter, the respondent began the mitigation plea.

Notice of appeal was lodged against the order of forfeiture. On 20 March 1985, the appeal came up for hearing before Chua J in the High Court. Before the court sat, the deputy public prosecutor asked the respondent whether the bailor had any documentary proof that the money was his. The respondent directed the question at Hamid. Hamid said the bail money was not his. The respondent maintained that that was the first time he learnt the money did not belong to Hamid. When the court sat, he applied to be discharged from further acting for Hamid and the court so ordered. The court also ordered that the appeal be adjourned for the bailor to engage another counsel and that he be cross-examined as to whether the $50,000 was in fact his savings or whether it was found from other sources. On 9 April 1985, Hamid was accordingly cross-examined in the subordinate courts.

Following this, investigations were conducted by the police in respect of an offence of giving false evidence on oath. Statements were made by Hamid and Bambang to the police. As a result of the investigations, a complaint was lodged by the Head of the Commercial Crime Division of the CID with the Law Society, thereby setting in motion these disciplinary proceedings.

Disciplinary Committee's conclusions

We now come to the conclusions of the Disciplinary Committee ('the committee'). In our opinion, the committee was entirely correct when it said there was only one issue which had to be decided. That was whether the respondent knew that the bail money was not Hamid's when he made the plea of mitigation. So if, at any time before the plea was made in the District Court, the respondent knew that the money or any part thereof did not belong to Hamid, he would have knowingly told a falsehood to the court.

The committee was of the view that the respondent had not been speaking the truth. The committee found that the respondent knew all along that the money never belonged to Hamid. The respondent was asked whether he questioned Hamid when told by him that he was to be the bailor, since Hamid was his employee, the sum involved was quite large, and Soebroto was a foreigner. His response was that he did not bother to do so as it was not his business why anyone should want to stand bail, or where the money came from. The committee found it difficult to accept such a response and concluded the truth was that the respondent well knew the money was provided by the Indonesians, and there was therefore no reason to question Hamid about it.

The committee was also unimpressed by counsel for the respondent's efforts to show that Hamid was an inveterate liar. It considered the three statements made by Hamid at different points in time. These were:

(1) the lengthy cross-examination before the District Court as ordered by the High Court;
(2) the lengthy statement recorded by the police in the course of their investigations; and
(3) the evidence on oath before the Disciplinary Committee.

It concluded that when a person makes three different statements to different people at lengthy intervals of time, there are bound to be inconsistencies over minor details, some of which could be due to mere lapses of memory. To the committee, the important question was, did the inconsistencies affect Hamid's credit, making

him a totally untruthful and unreliable witness? The committee considered all the inconsistencies pointed out by counsel for the respondent and was of the view that they did not go to the root of the matter. It was of the opinion that in spite of all the inconsistencies, Hamid was speaking the truth on the crucial matter in issue, which was whether the respondent knew that the bail money was not Hamid's. Hamid was cross-examined at great length and was not shaken on this central issue.

The committee also dealt with counsel's arguments that Hamid bore ill-will against the respondent. Hamid was no longer an employee of the respondent and he had left in less than happy circumstances. He was unhappy with the long hours he had to put in and the respondent's reluctance to employ any legal assistant. However, the committee was satisfied that Hamid did not concoct the evidence against the respondent.

There was also the submission that Hamid did not correct the respondent when the latter told the court that the bail money was Hamid's 15 years' savings. If Hamid's version was that the respondent knew all along that the bail money did not belong to him, there would be no need to intervene.

In the opinion of the committee, both the respondent and Hamid were participants in the attempt to deceive the District Court that the bail money was the 15 years' savings of a married man with three children and earning only $770 per month. Hamid was employed by the respondent from April 1981 at a monthly salary of $1,000. His nett pay, after deductions for Central Provident Fund, was $770 per month. But on 1 April 1984, the respondent increased his salary from $1,000 to $3,500 per month and the mitigation plea by the respondent on Hamid's behalf was made before the court on 26 May 1984, barely two months after the hefty salary increase. In the committee's opinion, the mitigation plea was a joint effort on their part to persuade the court not to forfeit the entire sum. Accordingly, there was no question of Hamid intervening in the course of the mitigation plea to tell the respondent that the money did not belong to him.

The final point dealt with by the committee was the submission that an adverse inference ought to be drawn as Mukti and Mantiri had not been called as witnesses. Counsel for the Law Society explained that they were out of jurisdiction and he had difficulty tracing them in Indonesia. The committee, being satisfied with the explanation and that there was no question of suppression of evidence, drew no adverse inference.

In the result, the committee was satisfied beyond reasonable doubt that the respondent had, on 26 May 1984, mitigated to the District Court in terms which he knew or ought to have known were untrue, and had thereby wilfully and falsely misrepresented to the court the true state of affairs. Accordingly, the committee determined that the respondent was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 80(2)(b) of the Legal Profession Act. The respondent was also found guilty of such conduct as would render him liable to be disbarred or struck off the roll of the court or suspended from practice or censured if a barrister or solicitor in England, due regard being had to the fact that the two professions are fused in Singapore, within the meaning of s 80(2)(h) of the Legal Profession Act.

The arguments before this court

The thrust of the respondent's arguments before us was that Hamid was not a witness of truth. It was submitted that at the very outset Hamid had told a lie when he declared on 10 September 1983 that he owned $25,000 in fixed deposit and $25,000 in cash. But it was clear that Hamid had acknowledged that the declaration of assets was false. Throughout the disciplinary proceedings, he had been explaining how the money came about and how he came to be the bailor.

Then it was said that a substantial sum, $25,000 in fixed deposit, was placed in Hamid's name when there was no need to do so. Hamid said in evidence that the Indonesians had pleaded with him to help them. They wanted him to stand bail.

It was submitted that Hamid gave three different versions on the innocuous fact as to when and how he came to know Soebroto. However, looking at the cross-examination on this point in its entirety, it seems clear that Hamid meant that some friends of his had told Soebroto about him, and that Soebroto then came to the respondent's office as a client on an earlier occasion. To say that Hamid gave three different versions would, in our opinion, be inaccurate.

The next alleged contradiction was in respect of who collected the fixed deposit receipt from the bank. The material issue was whether the respondent had been told by Hamid about the money having been placed in a fixed deposit receipt, and not who actually collected it from the bank. In this respect, we agree completely with the committee that any contradiction, if any, did not go to the root of the matter.

The next point canvassed before us was whether Hamid had been told by an Indian court interpreter, Thorarajoo, who also handled bail matters, that foreigners could not stand bail. The interpreter concerned said he did not tell anyone that foreigners could not be bailors. We are not impressed by this argument. Bail in the subordinate courts is an everyday occurrence, and there was nothing particularly significant about this bail

application that would warrant such meticulous attention by the interpreter. If the bail room was indeed crowded at that time, as the interpreter testified (crowded enough for the respondent to decide to leave the bail room to return to his office), it was hardly credible that he could remember the Indonesians were seated at the extreme corner of the bail room and talking among themselves. In fact, the interpreter had, after preparing the affidavit, forgotten to sign it. This was admitted by him. In any event, we do not think, even if the reason for Hamid standing bail was because foreigners could not be bailors, that it affected the case materially.

The next issue was the nature of Hamid's relationship with Soebroto. Hamid said at the cross-examination before the District Court that he had stood bail on compassionate grounds, as a family friend, that he was the only one the Indonesians could trust with the money. Before the committee, he said they were not his family friends, but that they trusted him. It must be remembered that Soebroto and Hamid had met before Soebroto was arrested. Hamid was also speaking in the Malay language and whatever the translation 'family friend' may mean, we are of the opinion that the central issue of whether the respondent knew the money was not Hamid's was unaffected.

The next submission concerned the evidence as to what happened in the respondent's office on the day that Mantiri, Mukti and Bambang first arrived. Hamid testified that there was discussion with the respondent on the question of bail and the bailors. The respondent submitted that there was contradiction in what Hamid said in examination-in-chief and under cross-examination. We are not able to detect any.

It was also contended that Bambang's evidence did not corroborate Hamid's, because Bambang said the visit was more or less a courtesy call on the respondent at his office and that there was no discussion on how the bail money of $50,000 was to be raised. If one examines Bambang's testimony in full, it is clear that there was discussion on the question of bail and who the bailors should be. The Indonesians were there for the purpose of bailing out Soebroto. Bambang mentioned that he was willing to stand bail for $25,000 on the security of his company's stock. There was also mention of whether such security would be allowed or not, preparation of papers, going to the CID afterwards to inquire whether the company's stock was acceptable as security for bail, the unsuccessful first attempt to bail out Soebroto, and the procurement of the additional $25,000 by Mukti.

If there was any substantial contradiction, in our opinion, it was between Bambang's testimony and that of the respondent. The respondent testified that, as far as he could recollect, Bambang was the only bailor for the whole of $50,000. Bambang adamantly maintained that he was standing bail for $25,000 only. Hamid's testimony on this was in complete agreement with Bambang's. Further, Bambang also testified that 10 September 1983 was a Saturday (and he was correct) and 'everything is closing around one o'clock'. They were therefore pressurized for time as they had to get the additional $25,000 ready, go to the respondent's office and then proceed to the subordinate courts to bail out Soebroto before 1 pm. Bambang stated that the respondent, Hamid, Mukti and he went together to the subordinate courts and 'it went very fast there', and within a matter of about 15-20 minutes, Soebroto was out. The respondent's version was that they went ahead of him to the subordinate courts. When he came later, he saw the bail room crowded and left for his office again. It was about half an hour later that he was told over the telephone that everything was ready and he then went back to the courts. In spite of all these, the respondent elected not to cross-examine Bambang at all.

The next argument related to Hamid's evidence where he said that Mantiri, Mukti and Bambang suggested he should be the bailor for $25,000. Bambang had made no mention of this in his evidence. It was therefore submitted that if Bambang had suggested it, he would certainly have said so. The simple answer to this is that Bambang said nothing about it because he was not asked. As we have stated earlier, the respondent had every opportunity to cross-examine Bambang but chose to ask him no questions.

It was then said that Hamid gave three different versions regarding the $25,000 cash which Mukti was supposed to have with him when the three Indonesians visited the respondent's office. We view Hamid's evidence as stating no more than that he knew from one or more of them that Mukti had the money in his briefcase. He was apparently uncertain as to who mentioned that fact but we do not think the lapse in memory affected the case materially.

Next came the issue of whether the respondent was present when the court interpreter was preparing the affidavit and the bail bond. Hamid said in his police statement, 'I think he was not there.' In his testimony before the committee, he said that the respondent was present when the affidavit and bail bond were being prepared. Later he said that he could not remember whether the respondent was there. Here again, there was apparently some uncertainty on Hamid's part. But we agree with the committee that this was not such a material contradiction as to destroy the credibility of the witness.

Hamid was next alleged to have lied concerning his visit to Queenstown Remand Prison to explain to Soebroto the reason for the rejection of the bail. In our opinion, it would be wholly unrealistic to expect a person to

remember the exact sequence of events that took place a few years ago. The same observations apply to the question whether Hamid did or did not apply before Chua J to withdraw the appeal against forfeiture of the bail money.

Next was the submission that hearsay evidence had been admitted which had gravely prejudiced the respondent. Mantiri and Mukti were not called as witnesses for the Law Society as they were not available. They had left Singapore. We found no merit in this submission. The first two of six passages (at pp 60 and 64 of the record) cited by the respondent as containing prejudicial hearsay evidence does not, in our view, have the prejudicial effect alleged. The committee's findings did not rely on those matters. What the committee found was that Hamid did tell the respondent that Mantiri had raised the remaining $25,000, not that Mantiri told the respondent.

With regard to the other four passages (at pp 84, 86, 88 and 90 of the record) relied on it is to be observed that the answers were elicited in cross-examination by counsel for the respondent.

In any event, it appears to us, even if we hold that the committee ought not to have admitted the evidence, that this is a case where s 169 of the Evidence Act (which applies by virtue of r 14 of the Advocates and Solicitors (Disciplinary Proceedings) Rules 1963) should be invoked. The section reads:

> The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case if it appears to the court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

The respondent also submitted that the committee erred in drawing wrong inferences regarding Hamid's conduct in court when the mitigation plea was made by the respondent, as those inferences were against the weight of the evidence which showed Hamid's conduct to be wholly inconsistent with his assertion that the respondent was acting without his instructions. In the light of the committee's conclusion that both the respondent and Hamid had colluded in the deception of the District Court, this submission becomes quite irrelevant.

The respondent next said that the committee erred in failing to draw an adverse inference on the Law Society's failure to call the alleged owners of the bail money as witnesses, and that the whole issue in these proceedings was whether the respondent knew whose money it was. With respect, that was not the central issue. The crucial question was whether the respondent knew, at any time before he made the mitigation plea, that the money did not belong to Hamid. It was patently clear that the money had come from Soebroto's family or friends, and that it was not Hamid's.

In so far as the evidence of retired Inspector Michael Tay Hock Chye was concerned, the respondent argued that the committee erred in not giving any or any sufficient weight and consideration to it. Inspector Michael Tay was the police prosecutor in Soebroto's case. He was called as the respondent's witness at the resumed hearing after the committee had adjourned for submissions by both counsel. The respondent's counsel informed the committee that they had difficulty tracing him.

After Inspector Tay had testified, the Chairman of the Disciplinary Committee asked counsel for the respondent in what way his evidence assisted the respondent's case. His reply was firstly, it corroborated the respondent's testimony that Hamid was seated behind the respondent in court and not in one corner, and had every opportunity to correct the respondent. Secondly, it was said that it corroborated the respondent's evidence when the respondent said he did not stand up immediately to mitigate, and that the respondent took instructions from Hamid.

We observe that Inspector Tay was testifying before the committee on matters that had occurred three years ago. He managed to remember practically the whole proceedings in the District Court, in particular details like Hamid being in the court room when he got there, that the respondent came in a few minutes later, who sat where, who said what and for how long. In reply to a question why he could recall the details so well, he said that there was 'a special reason' because the case was adjourned several times and the accused was absent from court, and he had to mention the case several times in court. He further said that he could not remember until he looked at the notes of evidence recorded by the district judge, and that the notes helped him recall all those details.

In our opinion, the reasons given by the witness are so improbable that they defy belief. There was nothing unusual in the case. The cheating charges involved a sum of less than $10,000, and several adjournments of a case in the subordinate courts are not exceptional occurrences. We find it hard to believe that merely looking at the notes of evidence recorded by the court could evoke memory of such details.

We now deal with the submissions pertaining to the fixed deposit receipt for $25,000. The respondent argued that the committee was wrong when it stated in the findings that the respondent knew there was a fixed deposit receipt in Hamid's name at the time of the first application for bail before the deputy registrar. This was because it had not been established conclusively that at the first application the fixed deposit receipt was already in existence. The respondent sought to rely on Bambang's evidence that the fixed deposit receipt was made on the same day that Soebroto was bailed out (10 September 1983) and that on the first application, the $25,000

was still in cash and with Mukti as far as he could remember. But plainly, Bambang was mistaken as to the dates on this point, as the fixed deposit receipt was dated 9 September 1983.

It was also submitted that since Hamid had said that Mantiri called him a few days after the first bail application to tell him she had the other $25,000, the first bail application could not have been 9 September 1983, but was some days before that date. Accordingly, the respondent contended that the finding of the committee that the first application was on 9 September 1983 was wrong. We do not think so. Hamid had stated clearly that they had gone to Malayan Banking Bhd and got the fixed deposit receipt before the first application was made. He was obviously mistaken as to the exact time frame when he used the words a 'few days later'. The committee was therefore justified in coming to the conclusion that the first bail application was on 9 September 1983. Before the committee, Hamid was not asked by the respondent to clarify this. Instead the respondent attempted to impeach Hamid by referring him to his earlier police statement and alleging that Hamid made no mention of the telephone call from Mantiri. The respondent was, however, proved wrong because Hamid did mention it.

The respondent also argued that no bail bond or affidavit of assets in respect of the first bail application was produced by the Law Society to clear the doubt whether the security for bail was in the form of a fixed deposit or cash. We find this argument wholly untenable. It must be plain to the respondent that if any bail bond or affidavit had been prepared by the staff of the subordinate courts for the first bail application, they would almost certainly have been destroyed once the application was rejected. It is common ground that the first bail application was unsuccessful.

The argument was then advanced that the conclusion of the committee at p 11 of its report was erroneous. The committee there said that the respondent strenuously denied knowledge of the fixed deposit receipt because admission of its existence would mean that he had knowledge that the fixed deposit money was provided by Mukti and did not belong to Hamid. It was argued that that conclusion did not necessarily and logically follow. The answer to this argument is that this statement was made after the committee had found that the respondent was told Mukti had the equivalent of S$25,000 with him, and was also told later the money had been placed on fixed deposit.

The respondent next argued that the committee was wrong in coming to the opinion that the respondent was not speaking the truth when he said that, so far as he could remember, the bail tendered for the first bail application was in one surety only, ie Bambang standing bail for $50,000. In our opinion, the committee was justified in its view. Hamid and Bambang had given evidence first. They corroborated each other when they testified that two sureties were envisaged, and two sureties were offered at the first bail application. The respondent chose not to cross-examine Bambang at all even on this point. He merely left it till later to assert in evidence that his recollection was otherwise.

It was then submitted that the committee erred and misdirected itself when it acted on its own presumptions regarding what must have occurred at the first bail application. The committee said at p 10 of the report:

> Furthermore when application is made to the court to bail out a person, counsel has to explain to the court the bail tendered. In this case the respondent must have explained to the deputy registrar that the bail tendered was in two sureties; that Hamid was standing surety in the sum of $25,000 by offering his fixed deposit receipt as security and Bambang was standing surety in the sum of $25,000 by offering the assets of his company.

The respondent argued that this was purely speculative as there was no evidence to support this. We reject this argument.

It is plain to us that the committee was merely commenting on the practice in bail applications in the subordinate courts and saying that the same practice must have taken place in this case. The Chairman of the Disciplinary Committee is a retired judge of the Supreme Court, and who had many years of experience in the subordinate courts as well. One member of the committee is an experienced district judge of the subordinate courts. Another is a practising advocate and solicitor of more than twenty years' standing.

We now come to an important finding of the committee. The committee held, after examining all the evidence, that Hamid and the respondent were both participants in the attempt to deceive the court that the bail money was the 15 years' savings of a married man with three children and earning only $770 per month. The committee was of the opinion that the plea of mitigation was in fact a joint effort on their part to persuade the district judge not to forfeit the entire sum of $50,000. There was therefore no question of Hamid intervening in the course of the mitigation plea to tell the respondent that the money was not his.

The respondent contended that the finding of the committee could not be supported having regard to the Law Society's case and the evidence of Hamid. In our opinion, such a finding does not detract from the thrust of the charge against the respondent and on the basis of the evidence before the committee it was justified in coming to such a conclusion, and in particular its conclusion was based on its earlier finding that the respondent knew that the bail money never came from Hamid.

A feeble argument was put forward by the respondent that although the conclusion of the committee made Hamid an accomplice, the committee failed to touch on this aspect. The answer to this is s 135 of the Evidence Act (Cap 97, 1985 Ed) which was amended by Act No 11 of 1976 and since 1 January 1977, reads:

> An accomplice shall be a competent witness against an accused person; and any rule of law or practice whereby at a trial it is obligatory for the court to warn itself about convicting the accused on the uncorroborated testimony of an accomplice is hereby abrogated.

We would add that, in any event, Hamid's evidence was corroborated by Bambang in many material respects.

The respondent then raised a question – if the respondent and Hamid were hand in glove, why should the respondent apply to discharge himself from further acting for Hamid at the appeal, instead of withdrawing the appeal? Hamid had instructed him to do so alleging that the respondent knew the bail money was not his. The answer appears plain to us. The deputy public prosecutor was present with the respondent and Hamid. It was the deputy public prosecutor who asked the respondent whether Hamid had any documentary proof of the ownership of the money, and the respondent in turn directed the question to Hamid, who told the respondent that he knew the money was not his and to withdraw the appeal. How could the respondent, in the light of Hamid's answer in the presence of the deputy public prosecutor, withdraw the appeal and incriminate himself?

The next argument again focused on Hamid's credibility as a witness. It was alleged that Hamid was hostile towards the respondent for a variety of reasons:

(1) Hamid had left the respondent's employ in unhappy circumstances. He complained about the respondent's reluctance to employ any legal assistant or clerk, resulting in his long working hours.
(2) The respondent had ticked off Hamid often for being away too long from the office for prayers, and had thus hurt Hamid's feelings. Hamid categorically denied this.
(3) The fact that Hamid left a job that was paying him $5,000 per month for a $1,000 per month job indicated that there was some serious rift, disagreement or displeasure with the employer.
(4) Hamid was very angry when the respondent discharged himself at the appeal instead of withdrawing the appeal. Hamid was vengeful, and was therefore putting all the blame on the respondent.
(5) When Hamid was confronted with the deputy public prosecutor's query at the appeal, he got cold feet and decided to push the blame onto the respondent who was his counsel.
(6) When Chua J ordered that there be an inquiry as to the source of the bail money, Hamid panicked and at the inquiry threw the entire blame on his counsel.
(7) Hamid had already left the respondent's employ and had nothing to lose in shifting the blame.
(8) Hamid was being investigated for an offence under s 181 of the Penal Code and to save his own skin, it became imperative for him to say that the respondent was his counsel and that he knew the bail money was not Hamid's. It was a desperate attempt to absolve himself from any blame or wrong doings.
(9) It was not unusual for people to blame their lawyers when things did not turn out the way they expected.

This contention that Hamid was hostile towards the respondent was also canvassed before the committee. The committee, with the advantage of having seen and heard the witness, accepted Hamid's assertion that he harboured no such grudge or ill-will.

The committee, with the benefit of having seen and heard the witness, did not think that Hamid concocted evidence against the respondent. We have examined the evidence and we agree with the committee's views. It may well be that the respondent did not benefit from the whole transaction. He could not anyway as the entire sum of the bail money was forfeited. Why the respondent should want to be involved in it is a question best left to himself to answer.

We, like the committee, are satisfied beyond reasonable doubt that the respondent did, on 26 May 1984, mitigate to the District Court in terms which he knew were untrue as the bail money was not the 15 years' savings of Hamid, nor did it belong to, or was provided by, Hamid.

It is imperative that advocates and solicitors of the Supreme Court maintain, at all times, the highest standard of integrity in court. It is clearly professional misconduct for an advocate and solicitor to engage in any sort of deception of the court. Accordingly, we agree with the determination of the committee that the respondent was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 80(2)(b) of the Legal Profession Act. We also have no doubt that the respondent's conduct came within the scope of s 80(2)(h) of the Legal Profession Act which reads:

> (2) Such due cause may be shown by proof that an advocate and solicitor –
>
> ...
>
> (h) has done some other act which would render him liable to be disbarred or struck off the roll of the court or suspended from practice or censured if a barrister or solicitor in England due regard being had to the fact that the two professions are fused in Singapore.

Having regard to all the circumstances we order that the respondent be suspended from practice for a period of six months and that he pays the costs here and before the committee.

Order accordingly.

Solicitors: *Spencer Gwee & Co*; *Leo Fernando*.

Reported by *PS Ranjan*

Mary Jer Pereira v The Attorney General

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 265 OF 1985
THEAN J
9 SEPTEMBER 1988

Revenue Law – Estate duty – Gift made by deceased – Whether included in dutiable property of deceased – Donee not retaining bona fide possession and enjoyment of gift – Estate Duty Act (Cap 96, 1985 Ed), s 8(c)

Elias Philip Pereira ('the deceased') had purchased the land and premises known as No 218, Queen Street, Singapore ('the property') in August 1966 for the purpose of his business. On 27 December 1971, he admitted his son Eric into partnership in relation to two businesses, one under the name and style of 'City School of Commerce' and the other under the name and style of 'Stamford Centre for Executive and Commercial Training'. Since Eric's admission to the partnership the property had been treated as a partnership property by the partners. The property was used for the partnership businesses, namely, City School of Commerce-Department of Arts ('City School-Arts'), City School of Commerce-Department of Science, and Stamford Centre for Executive and Commercial Training. The profits from the businesses, including the rents, actual and imputed, were divided in the ratio of 60:40, ie 60% thereof to the deceased and 40% thereof to Eric.

In 1973, the deceased's daughter Shirley became a partner of the firm and was entitled to 25% of the profits of the partnership, and in consequence the shares of the deceased and Eric were reduced to 50% and 25% respectively. With effect from 1 January 1975, however, there was a change in the division of profits of the partnership. Shirley ceased to be entitled to share in the rentals from the property, which were then shared between the deceased and Eric in the ratio of 60% to the deceased and 40% to Eric. The profits from the businesses continued to be divided in the ratio of 50% to the deceased, 25% to Eric and 25% to Shirley.

The issue in the case was whether the 40% equitable interest in the property was liable to estate duty on the death of the deceased. The dispute was centred on the receipt of the rental income from the property as from 1975 onwards to the date of death of the deceased. The case of the plaintiff was that the rental income from the property was shared between the deceased and Eric in the ratio of 60:40. According to the group accountant to the various businesses carried on by the deceased as a sole proprietor and those carried on by him in partnership with his children, in respect of the year 1975 and subsequent years, the profits or rentals from the property were apportioned between the deceased and Eric in the ratio of 60:40 and the profits from the business City School-Arts were apportioned between the three partners, namely, the deceased, Eric and Shirley in the ratio of 50:25:25 and the respective entitlements of the partners were credited to their capital accounts each year, and these were written by him in pencil in the 'memorandum of capital account' in the ledger of each year.

Such accounting treatments of the profits or rentals from the property as reflected in the ledgers of City School-Arts were not borne out by the contemporaneous documents emanating from the deceased. In answer to a query from the Comptroller of Income Tax, the deceased wrote a letter dated 11 August 1976 in which he said, 'I confirm that I am the sole recipient of the rental with effect from 1 January 1975.' In his income tax returns for subsequent years of assessment, he declared the net rental income as his own income, and he was assessed to income tax on such income. Correspondingly, Eric in his return for the year of assessment 1976 and subsequent years omitted his share of rental income from the property, and consequently he was not assessed to tax on his share of rental income to which he claimed he was entitled.

In addition to the three partnership businesses, the deceased carried on two other businesses as a sole proprietor to one of which he had transferred large sums of money from the accounts of the three partnership businesses during the period 1973-77.

Held, the 40% equitable interest of the deceased's son in the property was dutiable:

(1) Under the provisions of s 8(c) of the Estate Duty Act, the conditions of liability to duty occur if the person taking the gift does not immediately upon the gift assume bona fide beneficial possession and enjoyment of such gift and thenceforward retain such possession and enjoyment to the entire exclusion of the donor of such gift or of the benefit to him by contract or otherwise.

(2) The deceased had during his lifetime treated the payment for the use and occupation of the respective parts of the property by the three partnership businesses as rents paid by the partnership and had also treated these rents and the rent from the basement as being received solely by him. He confirmed in no uncertain terms that he was the sole recipient of all these rents, and in consequence he was assessed to income tax on these rents and he paid tax thereon. Eric therefore had not during the period 1975 to the date of the death of the deceased retained bona fide possession and enjoyment of the 40% equitable interest in the property to the entire exclusion of the deceased. The deceased had unchallengeable control over the rental income from the property. He was master of the income as it was paid. He arrogated to himself the right to receive the whole of the income and, on his own unequivocal confirmation, did receive and use it.

(3) In the circumstances, the Commissioner of Estate Duties was fully justified in including the subject matter of the gift as parts of the dutiable estate of the deceased.

Cases referred to

1 *O'Connor* v *Commissioner of Succession Duties (South Australia)* (1932) 47 CLR 601 (folld)
2 *Commissioner of Stamp Duties of New South Wales* v *Permanent Trustee Co of New South Wales* [1956] AC 512 (folld)